

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF MICHIGAN

3 William Frederick Saar, an individual ) Case No. 14-041- JTN  
4 95 Old Mill Drive, #17 )  
5 Holland, MI 49423 )  
6 (616) 392-8189 ) COMPLAINT FOR DECLARATORY AND  
7 Plaintiff ) INJUNCTIVE RELIEF  
8 v. )  
9 Tanger Factory Outlet Centers, Inc. ) [Civil Rights – Alleging Disability-Based  
10 3200 Northline Avenue, #360 ) Discrimination]  
11 Greensboro, North Carolina 27408 )  
12 And )  
13 Tanger Grand Rapids LLC )  
14 350 84<sup>th</sup> Street SW )  
15 Byron Center, MI 49315 )  
16 Defendant )  
17 STEIN HIGGS & HYDE PLLC  
Attorneys for Plaintiff  
By: James C. Higgs (P69514)  
Michael C. Hyde (P42440)  
117 South University Avenue  
Mount Pleasant, MI 48858  
Tel: 989-546-7295

18 **AMENDED COMPLAINT**  
19

20 There is no other civil action between the parties  
21 arising out of the same transaction or occurrence as  
22 alleged in this Complaint pending in this Court, nor  
has any such action been previously filed and  
dismissed or transferred after having been assigned  
to a judge.

23 Plaintiff, William Frederick Saar, (hereinafter the “Plaintiff”), through his undersigned counsels,  
24 hereby files this Complaint. In support hereof he states:

25 **JURISDICTION AND VENUE**  
26

27 1. This is an action for declaratory and injunctive relief pursuant to Title 42 U.S.C. – Public  
28 Health and Welfare, Chapter 126 – Equal Opportunity for Individuals with Disabilities,

1 Subchapter III – Public accommodations and services operated by private entities starting with  
2 §12181, et. seq. (hereinafter referred to as the “Federal ADA”).  
3 2. This Court is vested with original jurisdiction under 28 U.S.C. §1331, pendent and  
4 supplemental jurisdiction is proper under 28 U.S.C. § 1337 and thus, this Court has  
jurisdiction.  
5 3. Venue is proper in this Court, pursuant to 28 U.S.C. §1331(B) in that all events giving rise to  
6 this lawsuit occurred in Michigan.  
7 4. The remedies provided by the “Federal ADA” suits are brought under the Federal Civil Rights  
Act of 1964.

8 **THE PARTIES**

9 5. Plaintiff William Frederick Saar is a citizen of the United States and resides in Ottawa County,  
Michigan, which is in this judicial district.  
10 6. Defendant Tanger Grand Rapids LLC is the owner and landlord of the Byron Center Tanger  
11 Outlet Mall at 350 84th Street SW, Byron Center, MI 49315  
12 7. Tanger Factory Outlet Centers, Inc., a REIT, 3200 Northline Avenue #360, Greensboro, North  
13 Caroline 27408 is the parent corporation of Tanger Grand Rapids LLC, (hereinafter,  
14 collectively, the “Defendants”).  
15

16 **GENERAL ALLEGATIONS**

17 8. This is an action for injunctive relief, attorney’s fees and litigation expenses (including, but not  
limited to, court costs and expert fees) pursuant to Title 42 U.S.C. Public Health and Welfare,  
18 Chapter 126 – Equal Opportunity for Individuals with Disabilities, Subchapter III – Public  
19 accommodations and services operated by private entities starting with §12181, et. seq., (“THE  
20 AMERICANS WITH DISABILITIES ACT of 1990 [PL101-336] and the AMERICANS  
21 WITH DISABILITIES AMENDMENTS ACT OF 2008 [PL110-325], the “FEDERAL ADA”).  
22 9. On or about and between 2015 and 2106, the Plaintiff visited the outlet mall in the Defendants’  
23 Facility known as Byron Center Tanger Outlet Mall and located at 350 84th Street SW, Byron  
24 Center, MI 49315 (hereinafter sometimes referred to as “Defendants’ Facility” or “Defendants’  
25 Property”) encountered or had knowledge of the architectural barriers, violations of the  
26 “Federal ADA” as further enumerated and alleged in Paragraph 24 below.  
27

28 Advocate’s Statement:

1           “I went to the NEW Byron Center Tanger Outlet mall yesterday and was  
2 very disappointed. I am alone and use an electric scooter for access.  
3 Handicapped parking is not the closest to the entrances and there was not  
4 one single door that had any way to open without someone holding it. I  
5 travel in a motorhome in warm weather and have never felt so out of place  
6 in a "NEW" complex that is less than 1 year old. When I posted that  
7 comment on their review site the comment disappeared when I checked  
8 back. Apparently they don't want reviews like that. Is this place anything like  
ADA friendly?”

9

10. At the time of Plaintiff's visit to the Defendants' Facility, prior to instituting the instant action,  
11 Plaintiff William Frederick Saar (hereinafter referred to as "Plaintiff") is a resident of the State  
12 of Michigan, County of Kent. Plaintiff William Frederick Saar suffers from what constitutes a  
13 "qualified disability" under the "Federal ADA".  
14. Plaintiff has a certain developmental disability which limits the use of his legs and uses a  
15 wheelchair.  
16. The Plaintiff personally visited Defendants' Property, but was denied full and equal access to  
17 and full and equal enjoyment of the facilities within Defendants' Property, which is the  
18 subject of this lawsuit.  
19. The Plaintiff has visited, used, or attempted to use the property which forms the basis of this  
20 lawsuit on, about and between the dates above referenced, and but for the negligent  
21 discrimination they encountered on the visit, plans to, and intends to, return to the property to  
22 avail themselves of the goods and services offered to the public at the property.  
23. The Plaintiff has encountered architectural barriers and discriminatory policies and procedures  
24 at the subject property.  
25. The barriers to access at the property have endangered his safety.  
26. Plaintiff is a disabled individual who is currently deterred from patronizing a public  
27 accommodation due to Defendants' negligent failure to comply with the "Federal ADA"  
28 signed into law in 1990, and so he has suffered an actual injury.

1 17. Plaintiff is threatened with harm in the future because of existing building ADA violations and  
2 imminently threatened non-compliance with the “Federal ADA”, and so he has suffered  
imminent injury.

5 19. Defendants may own and/or operate more outlet malls in States and elsewhere in the United  
6 States which are also in violation of the “Federal ADA”.

7 | OUR TEAM:

8 | Leadership

The individual members of our executive and center management staff's are all highly qualified professionals selected for their talent, knowledge and experience in retail and outlet management. Led by Steven B. Tanger, President and Chief Executive Officer, Tanger management operates in a cordial, caring and competent manner. This has earned them the respect of the industry and gained them loyalty – and friendship of our merchant partners.

14 STEVEN B. TANGER

15 | Director

President & CEO, Tanger Factory Outlet Centers, Inc.

17 Director of the Company since May 13, 1993. President and Chief Executive Officer since January  
18 1, 2009. President and Chief Operating Officer from January 1995 to December 2008. Executive  
19 Vice President from 1986 to December 1994. Mr. Tanger has served on the Board of Directors of  
The Fresh Market, Inc. since June 2012.

21 Mr. Tanger joined the Company's predecessor in 1986 and is the son of the Company's founder,  
22 Stanley IK. Tanger. Together with his father, Mr. Tanger has helped develop the Company into a  
23 portfolio of 42 upscale outlet shopping centers in 21 states coast to coast and in Canada, totaling  
24 approximately 14.3 million square feet leased to over 3,000 stores operated by more than 490  
25 different brand name companies. Mr. Tanger provides an insider's perspective in Board  
26 discussions about the business and strategic direction of the Company and has experience in all  
aspects of the Company's business.

1 SHOP OUTLETS. SHOP TANGER  
2

3 At Tanger, we're committed to bringing you the ultimate shopping experience.  
4

5 For us, that means guiding you towards the best deals at your favorite designer and brand-name  
6 stores. And, thanks to our partnerships with leading fashion industry experts, we can bring you up-  
7 to-date fashion reporting on the latest trends. Explore our website to plan your next shopping trip  
8 and be sure to download valuable coupons to save even more.

9 We also offer a number of ways to stay connected for the latest deals. And don't forget to join  
10 TangerClub for exclusive member savings and sale events.

11 When you're looking for the best value, the best brands and the best trendsetting ideas, THINK  
12 TANGER OUTLETS.

13 It's the best place to shop.

14  
15 Best regards,

16 Steven B. Tanger

17 President and Chief Executive Officer

18 20. The Defendants, Tanger Factory Outlet Centers, Inc., a REIT, 3200 Northline Avenue #360,  
19 Greensboro, North Caroline 27408 and Tanger Grand Rapids LLC, aka Byron Center Tanger  
20 Outlet Mall, 350 84th Street SW, Byron Center, MI 49315, doing business as Byron Center  
21 Tanger Outlet Mall, located at , 350 84th Street SW, Byron Center, MI 49315, is authorized to  
22 conduct, and is conducting business within the State of Michigan.

23 21. Upon information and belief, Defendant Tanger Grand Rapids LLC is the owner, lessee and/or  
24 operator of the real property (the "Subject Facility"), and the owner of the improvements where  
25 the Subject Facility is located and that the real property shall conform to laws, regulations,  
26 codes and ordinances of Federal, State, County, City or any other jurisdiction as each may  
27 apply, which is the subject of this action: the outlet mall commonly referred to as Byron  
28 Center Tanger Outlet Mall, which is located at , 350 84th Street SW, Byron Center, MI 49315,

1 which also maintains and controls the Subject Facility.

2 22. Defendants own, lease, lease to, or operate a place of public accommodation as defined by the  
3 ADA and the regulations implementing the ADA, Title 42 U.S.C., Chapter 126, Subchapter III  
§12181(7)(A), §12182(b)(1)(A)(i) and §12183.

4 23. Defendants are responsible for complying with the obligations of the Federal Civil Rights  
5 Laws, one of which is the “Federal ADA”.

6 24. The place of public accommodation that the Defendants own, operate, lease, or lease to, known  
7 as Byron Center Tanger Outlet Mall, located at , 350 84th Street SW, Byron Center, MI 49315.

8 25. All events giving rise to this lawsuit occurred in Kent County, State of Michigan.

9 26. Venue is proper in this Court as the premises are located in the State of Michigan and  
Defendants do business within the State of Michigan.

10 27. Pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343, this Court has been given original  
11 jurisdiction over actions which arise from the Defendants’ violations of Title 42 U.S.C.,  
12 Chapter 126, Subchapter III §12181 et seq. See also 28 U.S.C. §2201 and §2202.

13 **COUNT I – VIOLATIONS OF THE “FEDERAL ADA”**

14 28. The preceding paragraphs 1 through 27 are incorporated herein by reference as though fully set  
forth.

15 29. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990  
16 (“ADA”), Title 42 U.S.C. §12101 et. seq. with an effective date of January 26, 1992, followed  
17 by the Americans with Disabilities Amendments Act of 2008 (“ADA”) on September 25, 2008,  
18 with an effective date of January 1, 2009.

19 30. Congress found, among other things, that:

20 (i) some 43,000,000 Americans have one or more physical or mental disabilities, and this  
number shall increase as the population continues to grow older;

21 (ii) historically, society has tended to isolate and segregate individuals with disabilities, and,  
despite some improvements, such forms of discrimination against disabled individuals  
22 continue to be a pervasive social problem, requiring serious attention;

23 (iii) discrimination against disabled individuals persists in such critical areas as  
employment, housing, public accommodations, transportation, communication, recreation,  
institutionalization, health services, voting, and access to public services and public  
24 facilities;

25

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1 (iv) individuals with disabilities continually suffer forms of discrimination, including  
2 outright intentional exclusion, the discriminatory effects of architectural, transportation, and  
3 communication barriers, failure to make modifications to existing facilities and practices.  
Exclusionary qualification standards and criteria, segregation, and regulation to lesser  
services, programs, benefits, or other opportunities; and,

4 (v) the continuing existence of unfair and unnecessary discrimination and prejudice denies  
5 people with disabilities the opportunity to compete on an equal basis and to pursue those  
6 opportunities for which our country is justifiably famous, and costs the United States  
billions of dollars in unnecessary expenses resulting from dependency and non-productivity.  
Title 42 U.S.C., Chapter 126 §12101(a)(1)-(3), (5) and (8).

7 31. Congress explicitly stated that the purpose of the “Federal ADA” was to:

8 (i) provide a clear and comprehensive national mandate for the elimination of  
9 discrimination against individuals with disabilities;

10 (ii) provide clear, strong, consistent, enforceable standards addressing discrimination  
against individuals with disabilities; and,

11 (iii) invoke the sweep of congressional authority, including the power to enforce the  
12 fourteenth amendment and to regulate commerce, in order to address the major areas of  
13 discrimination faced on a daily basis by people with disabilities.

14 Title 42 U.S.C., Chapter 126 §12101(b)(1)-(4).

15 32. Pursuant to Title 42 U.S.C., Chapter 126, Subchapter III §12181(7)(A)(B) and 28 C.F.R.

16 §36.104, Defendants’ Property is a place of public accommodation in that it is an outlet mall  
17 facility which provides shopping, food, beverages and other services to the public.

18 33. Pursuant to Title 42 U.S.C., Chapter 126, Subchapter III §12181(7)(A)(B) and 28 C.F.R.

19 §36.104, the building and/or Subject Facility which is the subject of this action is a public  
20 accommodation covered by the “Federal ADA” and which must be in compliance therewith.

21 34. The Plaintiff is informed and believes, and therefore alleges that the Subject Facility has begun  
operations and/or undergone substantial remodeling, repairs and/or alterations since January  
22 26, 1990.

23 35. Defendants have discriminated, and continue to discriminate, against the Plaintiff, and others  
24 who are similarly situated, by denying full and equal access to, and full and equal enjoyment  
of, goods, services, facilities, privileges, advantages and/or accommodations at Defendants’  
25 Property, in derogation of Title 42 U.S.C., Chapter 126, Subchapter III §12101 et. seq., and as  
26 prohibited by Title 42 U.S.C., Chapter 126, Subchapter III §12182 et. seq., and by failing to  
27

1 remove architectural barriers pursuant to Title 42 U.S.C., Chapter 126, Subchapter III  
2 §12182(b)(2)(A) et. seq., where such removal is readily achievable.

3 36. The Plaintiff has been unable to, and continues to be unable to, enjoy full and equal safe access  
4 to, and the benefits of, all the accommodations and services offered at Defendants' Property.

5 37. Prior to the filing of this lawsuit, the Plaintiff visited Defendants' Property and was denied full  
6 and safe access to all the benefits, accommodations and services of the Defendants.

7 38. Prior to the filing of this lawsuit, the Plaintiff personally visited, used or attempted to use the  
8 Defendants' Property, on or about dates above mentioned, with the intention of using and  
enjoying the Property.

9 39. When Plaintiff realized that there were violations of the "Federal ADA" at the Property, he  
began perusing and cataloging these violations.

10 40. Plaintiff visited the property with the desire of enjoying it, and possibly publishing information  
11 regarding the quality and the accessibility of Defendants' facilities, but was denied full and safe  
12 access to the facilities of Defendants' Property, and therefore suffered an injury in fact.

13 41. In addition, Plaintiff continues to desire to visit Defendants' Property in the future, but  
14 continues to be injured in that he is unable to and continues to be discriminated against due to  
15 the architectural barriers which remain at Defendants' Property, all in violation of the "Federal  
ADA".

16 42. The Defendants have discriminated against the individual Plaintiff by negligently denying him  
17 access to and full and equal enjoyment of the goods, services, facilities, privileges, advantages  
18 and/or accommodations of the buildings, as prohibited by Title 42 U.S.C., Chapter 126,  
19 Subchapter III §12181(7)(A)(B) et seq.

20 43. The Defendants have discriminated, and are continuing to discriminate against the Plaintiff in  
21 violation of the "Federal ADA" by failing to, inter alia, have accessible facilities by January 26,  
22 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of  
\$500,000 or less).

23 44. A preliminary inspection of the Defendants' Property has shown that violations exist.

24 45. Pursuant to the mandates of Title 42 U.S.C., Chapter 126, §12101, the Architectural and  
25 Transportation Barriers Compliance Board (Access Board) is the government agency who has  
26 the responsibility to write the safe harbor for design and construction to be in compliance with  
the "Federal ADA" law and published the following:

- (i) ADA Accessibility Guidelines 28 CFR Part 36 (56 FR 35544, July 26, 1991).
- (ii) ADA & ABA Accessibility Guidelines; Final Rule (published in the Federal Register on July 23, 2004, guidelines effective September 21, 2004), hereinafter referred to as “ADAAG”.

46. The Defendants' Subject Facility is in violation of Title 42 U.S.C., Chapter 126, Subchapter III §12181 et.seq., the ADA and 28 C.F.R. §36.302 et. seq., and is discriminating against the Plaintiff as a result of inter alia, the following specific violations, pursuant to the mandates of Title 42 U.S.C., Chapter 126, Subchapter III §12188(a)(b) and §12181 et. seq. the ADA and 36 CFR Parts 1190 and 1191, with an effective date of September 21, 2004.

47. The American with Disabilities Amendments Act of 2008 P.L. 110-325

## Title 42 – The Public Health and Welfare

Chapter 126 – Equal Opportunity for individual with Disabilities

### Subchapter III – Public Accommodations and services operated by Private Entities

#### Section 12182 – Prohibition of discrimination by public accommodations

### (a) General Rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

### A. Building Blocks

- 302 Floor or Ground Surface
- 303 Changes in Level
- 304 Turning Space
- 305 Clear Floor or Ground Space
- 306 Knee and Toe Clearance
- 307 Protruding Objects
- 308 Reach Ranges
- 309 Operable Parts

## B. Accessible Route

- 206.2.1 Site Arrival Points
- 206.2.2 Within A Site

1 206.2.3 Multi-Story Buildings and Facilities  
2 206.2.8 Employee Work Areas  
206.3 Location

3 402 Accessible Routes  
4 403 Walking Surfaces  
404 Doors, Doorways and Gates  
5 405 Ramps  
406 Curb Ramps  
6 407 Elevators

7

8 **C. General Site and Building Elements**

9 502 Parking Spaces  
503 Passenger Loading Zone  
10 504 Stairways  
505 Handrails

12

13 **D. Plumbing Elements and Facilities**

14 602 Drinking Fountains  
603 Toilet and Bathing Rooms  
604 Water Closets and Toilet Compartments  
15 605 Urinals  
606 Lavatories and Sinks  
609 Grab Bars  
17 610 Seats

18

19 **E. Communication Elements and Features**

20 702 Fire Alarm Systems  
703 Signs  
21 704 Telephone  
705 Detectable Warnings  
22 706 Assistive Listening Systems  
707 Automatic Teller Machines and Fare Machines

24

25 **F. Special Rooms, Spaces, and Elements**

26 802 Wheelchair Spaces, Companion Seats, and Designated Aisle Seats  
803 Dressing, Fitting, and Locker Rooms  
27 804 Kitchens and Kitchenette  
811 Storage

## G. Built-In Elements

- 902 Dining Surfaces and Work Surfaces
- 903 Benches
- 904 Check-Out and Sales and Service Counters

## H. Recreation Facilities

## 1008 Play Area

48. Plaintiff has not, and is not required under law to list each and every one of the violations of the "Federal ADA" with specificity.

49. The Ninth Circuit Court of Appeals has held that one visit to a public accommodation and encountering or knowing of barriers in violation of the “Federal ADA”, which deter future visits to the public accommodation, confer standing on a plaintiff and the right to conduct a Rule 34 Inspection on the whole of the public areas of the public accommodation.

In so holding, we agree with Steger v. Franco, Inc., 228 F.3d 889 (8th Cir.2000), in which the Eighth Circuit held that a blind plaintiff who had only once attempted to enter the defendant's building had standing to bring an ADA challenge. The plaintiff was thwarted in his attempt to gain access to the men's restroom in the building because the signage did not comply with the ADA. Id. at 893-94. Like that plaintiff, Doran has personally encountered certain barriers that bar his access to Holiday's Paradise store. Further, the Steger court rejected the defendant's argument that the blind plaintiff could challenge the ADA violation only as to the restroom he had attempted to access, stating that **such a "narrow construction" of the ADA would be "not only ... inefficient, but impractical."** Id. See also Parr v. L & L Drive-Inn Restaurant, 96 F.Supp.2d 1065, 1080-81 (D.Haw.2000) ("This court is reluctant to embrace a rule of standing that would allow an alleged wrongdoer to evade the court's jurisdiction so long as he does not injure the same person twice.... Plaintiff should not be required to encounter every barrier seriatim... to obtain effective relief." (internal quotations and citation omitted)). We agree with the Eighth Circuit that Doran need not necessarily have personally encountered all the barriers that bar his access to the Paradise store in order to seek an injunction to remove those barriers. (Emphasis Added). Pickern v. Holiday Quality Foods Inc., 293 F.3d 1133 (9th Cir., 2002).

1       50. The discriminatory violations described in paragraph 24 A-H, are not an exclusive list of the  
2           Defendants' "Federal ADA" violations.

3       51. Plaintiff requires a complete building ADA accessibility audit, by an architect who has 10 years  
4           experience in accessibility compliance, of the Defendants' place of public accommodation in  
5           order to photograph and measure all of the discriminatory acts violating the "Federal ADA"  
6           and all of the barriers to access.

7       52. Plaintiff requires a complete set of the "Federal ADA" retrofit permit drawings to be done on  
8           the REVIT platform by the owner's architect who has 10 years experience in accessibility  
9           compliance.

10      53. The "Federal ADA" retrofit permit drawing will be planchecked and approved and so stamped  
11           by architect who did the audit.

12      54. Plaintiff requires a licensed contractor with 5 years of accessibility compliance work to price  
13           the "Federal ADA" retrofit permit drawings and guarantee that price if awarded the retrofit  
14           contract.

15      55. The individual Plaintiff, and all other individuals similarly situated, have been denied access to,  
16           and have been denied the benefits of services, programs and activities of the Defendants'  
17           buildings and its facilities, and have otherwise been discriminated against and damaged by the  
18           Defendants because of the Defendants' "Federal ADA" violations, as set forth above.

19      56. The individual Plaintiff, and all others similarly situated will continue to suffer such  
20           discrimination, injury, and damage without the immediate relief provided by the "Federal  
21           ADA" as requested herein.

22      57. In order to remedy this negligent discriminatory situation, the Plaintiff requires an accessibility  
23           audit of the Defendants' place of public accommodation in order to determine all of the areas  
24           of non-compliance with the "Federal ADA".

25      58. The date to start the audit will be set by the attorneys of the Defendants and Plaintiff in  
26           agreement with the Court no later than 32 days after filing of the "Federal ADA" non-  
27           compliant building complaint.

28      59. Defendants have discriminated against the Plaintiff by denying him access to full and equal  
29           enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of  
30           its place of public accommodation or commercial facility in violation of Title 42 U.S.C.,  
31           Chapter 126, Subchapter III §12181 et seq. and 28 CFR 36.302 et seq.

1       60. Furthermore, the Defendants continue to negligently discriminate against the Plaintiff, and all  
2       those similarly situated by failing to make reasonable modifications in policies, practices or  
3       procedures, when such modifications are necessary to afford all offered goods, services,  
4       facilities, privileges, advantages or accommodations to individuals with disabilities; and by  
5       failing to take such efforts that may be necessary to ensure that no individual with a disability is  
6       excluded, denied services, segregated or otherwise treated differently than other individuals  
7       because of architectural barriers and the absence of auxiliary aids and services.

8       61. Plaintiff is without adequate remedy at law and is suffering irreparable harm and damages.  
9       Plaintiff has retained the undersigned counsels and is entitled to recover attorney's fees, costs,  
10      and litigation expenses from the Defendants pursuant to Title 42 U.S.C., Chapter 126,  
11      Subchapter III §12188(a) and 28 CFR §36.505; and as also listed in Regulation from Title III  
12      Section 36.505 which states that courts are authorized to award attorneys fees, including  
13      litigation expenses and costs as provided in Section 505 of the Act.

14      62. Defendants are required to remove the existing architectural barriers to the physically disabled  
15      when such removal is readily achievable for its place of public accommodation that has existed  
16      prior to January 26, 1992, 28 CFR §36.304(a); in the alternative, if there has been an alteration  
17      to Defendants' place of public accommodation since January 26, 1992, then the Defendants are  
18      required to ensure to the maximum extent feasible, that the altered portions of the facility are  
19      readily accessible to and usable by individuals with disabilities, including individuals who use  
20      wheelchairs, 28 CFR §36.402.

21      63. Notice to Defendant is not required as a result of the Defendants' failure to cure the violations  
22      by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross  
23      receipts of \$500,000 or less).

24      64. All other conditions precedent have been met by Plaintiff or waived by the Defendants.

25      65. Pursuant to Title 42 U.S.C., Chapter 126, Subchapter III §12188(a)(2), this Court is provided  
26      with authority to grant Plaintiff Injunctive Relief, including an order to require the Defendants  
27      to alter The Defendants' Facilities to make those facilities readily accessible and usable to the  
28      Plaintiff and all other persons with disabilities as defined by the "Federal ADA"; or by closing  
the facility until such time as the Defendants cure their violations of the "Federal ADA".

1       66. Upon information and belief, there are other current violations of the “Federal ADA” at  
2              Defendants’ Property, and only once a full ADA accessibility audit is done can all said  
3              violations be identified.

4       67. To date, the architectural barriers and other violations of the “Federal ADA” still exist and  
5              have not been remedied or altered in such a way as to effectuate compliance with the  
6              provisions of the “Federal ADA”.

7       68. Pursuant to the “Federal ADA”, Title 42 U.S.C., Chapter 126 §12101et seq., and 28 C.F.R.  
8              §36.304, the Defendants were required to make the Subject Facility, a place of public  
9              accommodation, accessible to persons with disabilities since January 28, 1992.

10      69. To date, the Defendants have negligently failed to comply with this mandate.

11      70. The Plaintiff has been obligated to retain undersigned counsel for the filing and prosecution of  
12              this action.

13      71. The Plaintiff is entitled to have his reasonable attorney’s fees, litigation expenses, and expenses  
14              paid by the Defendants, pursuant to Title 42 U.S.C., Chapter 126, Subchapter III §12205.

15      72. Pursuant to Title 42 U.S.C., Chapter 126, Subchapter III §12188(a)(2), this Court is vested with  
16              the authority to grant the Plaintiff Injunctive Relief; including an order to alter the subject  
17              facilities to make them readily accessible to and usable by individuals with disabilities to the  
18              extent required by the “Federal ADA”, and closing the subject facilities until the requisite  
19              modifications are completed.

20      **WHEREFORE**, the Plaintiff hereby demands judgment against the Defendants and requests the  
21              following injunctive and declaratory relief:

22      A. The Court declares that the Subject Property and Subject Facility owned, operated, leased,  
23              controlled, and/or administered by the Defendants is in violation of the “Federal ADA”;  
24      B. The Court enter an Order requiring the Defendants to alter their facilities and amenities to make  
25              them accessible to and usable by individuals with disabilities to the full extent required by the  
26              “Federal ADA”;  
27      C. The Court enter an Order pursuant to any legally cognizable Jury Verdict rendered in this case;  
28      D. The Court award reasonable attorney’s fees, all costs (including, but not limited to court costs  
            and expert fees), litigation expenses, to the Plaintiff.  
E. The court enter an Order directing the Defendant to remove the ADA barriers within the next  
365 days; at the end of the ADA retrofit, but no longer than 365 days; at the Defendants expense  
pay for the Plaintiff and the Plaintiff’s ADA expert to review the ADA retrofit and issue an  
opinion.  
F. The Court award such other and further relief as it deems necessary, just and proper.

27              **DEMAND FOR JURY TRIAL**  
28

1 The Plaintiff hereby demands a trial by jury on all issues so triable as a matter of right.  
2  
3

Respectfully submitted,

4 Date: 03/24/2017

/s/ James C. Higgs & /s/ Michael C. Hyde

5 By: James C. Higgs  
By: Michael C. Hyde  
Stein Higgs & Hyde PLLC  
117 South University Avenue  
Mount Pleasant, MI 48858  
Tel: 989-546-7295

8  
9  
10 ADA/ACCESS Advocates/00-Advocates/2016/SAAR.03-15-49423-WISA/Complaint/DR01.031516  
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